For the Union and American.] I propose to submit to the consideration of your readers, and especially those of them, who belong to the legal profession, a few thoughts on the present condition of the to do so, because the question is frequently propounded: Have we constitutional judges now occupying the bench in Tennessee The frequency of this question indicates,

It is scarcely necessary to premise, that all of our judges and chancellors now hold their positions under appointments, made by either Gov. Johnson or Gov. Brownlow. In the remarks which I am about to submit, I waive the question as to the legal character of the executive and legislative officers now in existence, but proceed upon the assumption that we have a constitutional Governo and Legislature, not, however, intending to indicate any opinion on that subject. Assuming that we have a legal Governor the question is presented: Has the Governor

a constitutional right to appoint and commission the judges and chancellors? By referring to art. 6, sec. 3, of the Constitution, we find that: "The Judges of the supreme Court shall be elected by the qualied voters of the State at large, and the judges of such inferior courts as the Legislature may establish, shall be elected by the ualified voters, residing within the bounds of any district or circuit to which such inferior judge or judges, either of law or equity, may be assigned, by ballot, in the same manner that members of the General Assembly are elected." For the purpose of carrying out this fun

lamental provision, the Legislature enacted, that "the election for Judges and Chancel-lors shall be held on the 4th Thursday of May every eight years, counting from the 4th Thursday of May, 1854, and when a vacancy occurs; and for the Attorney General and Reporter, and the District Attorney, every six years, counting from the same time, and when a vacancy occurs." Code, acc

According to this provision, the Judges and Chancellors were to be elected, on the 4th Thursday of May 1862, and to hold their offices, until the 4th Thursday of May, 1870. As no elections were held on the 4th Thursday of May, 1862, which are regarded as valid, (the State then being in in and under Confederate rule,) it follows, that from that time, vacancies occurred in the several judicial offices by the expiration of their constitutional terms. These vacancies were filled by appointments made by Governor Johnson whilst Military Governor, as far as they were filled at all.

When the Convention assembled on the 9th of January, 1865, they adopted a schedule to the amendments of the Constitution, which declared, that "all civil and military officers which have been or may hereafter be appointed by the acting Governor of the State, are hereby ratified and confirmed, and me to hold and exercise th functions of their respective officer until their successors shall be elected or appoint ed, and qualified as prescribed by the law and Constitution of the State and United

Giving to this schedule the force of a con-stitutional provision, it follows, that all the judicial appointments made by Gov. John-son were valid, and continue in force until anccessors are appointed or elected, in pursuance of the laws and Constitution of the

The Legislature on the 20th of May 1865, adopted a joint resolution by which they ratified and confirmed all the civil officers appointed by Gov. Johnson after the 7th day of May, 1862, from which it is clearly to be inferred, that the provision of the schedule, before recited, was intended to apply only to the appointments made, or to be made, by Gov. Johnson; and that it has no application whatever to the appointments made by Gov. Brownlow. The former have the sanction of the amended Constitution the later must depend, for their legality, upon the Constitution and laws, as they existed

when the appointments were made. Turning to the Constitution, we find the following provision for filling vacancies-Art. 7, section 4: "The election of all officers, and the filling of all vacancies that may happen by death, resignation or re moval, not otherwise directed or provided for by the Constitution, shall be made in such manner as the Legislature shall direct." It is to be specially observed that this provision is confined to vacancies occuring b "death, resignation or removal," and that it ha n o application to vacancies occurring from the expiration of the terms of office. It is morecon stitutional provision in regard to vacancies, and, therefore, that the only authority conferred on the Legislatere, to provide for vacancies, has reference to vacancies oc curring by "death, resignation or removal." In currying out this provision, the Legis lature has enacted as follows: "Whenever: eacancy occurs in any of the offices herein named, (including Judges and Chancellors,) the Gevernor shall order an election, by issuing proper writs of election to fill the vacancy, giving notice thereof." Code chap. 5, art. 1, sec. 312 After providing for sixty days notice in the election of Su preme Judge, and thirty days in all other judicial elections—the code proceeds: "In the mean time, the Governor shall appoint a suitable person to fill the office, until the election of a successor." Code, sec. 315. The law, therefore, makes it the duty the Governor, whenever he is informed of the death, resignation, or removal of a Judge or Chancellor, to issue writs of election, giving sixty or thirty days notice, as the case may be; and, until the expiration of this time, he is authorized to appoint a special Judge or Chancellor. The law is explicit and imperative- whenever such vacancy occurs, the iovernor shall issue writs of election. He has no discretion as to the time when he will issue writs of election-he is bound to do so whenever he is informed of the vacancy. He has no authority to appoint a suitable

be a palpable abuse of executive authority, and a plain infraction of the rights of the people to elect the judicial officers. removal; but as regards vacancies occurring from the expiration of a judicial term, the Constitution and the law, are alike silent. seems never to have been anticipated, that such a vacancy would occur, and hence no provision has been made for it. The-Convention which met at Nashville, in January, 1865, to amend the Constitution, overlooked this omission in the Constitution, and therefore provided no remedy. They provided for the ratification of the They provided for the ratification of the appointments made by Gov. Johnson, and there left the subject. The Legislature has not undertaken to remedy the defect, nor indeed have they any constituted power to left the provided have they any constituted power to left the provided for the ratification of the abyse far below. Mr. Knapp being the lightest of the party, was let down by a vince him of his error. do so. Gov. Brownlow has no such power strong cord a distance of some thirty yards, It is useless for us to denythe above charge. ed to make appointments to fill such vacan- seen enough by jerking the rope. cies, he has simply assumed power that is not

right. If my conclusions are correct, the not been tied under his arms, he would have State, with a view to present and future following propositions are true:

1. There is no constitutional provision

invalid and of no effect.

ended Constitution, in 1865, expressly get forward nor back. ratified and confirmed the judicial appointments made and to be made by Gov. John-

5. All the judicial appointments made by Gov. Brownlow, whether made to fill vacancies occurring by expiration of terms, or by death, resignation or removal of those left to light us on our way back to the river. appointed to fill vacancies occurring by exjudicial system of our State. I am induced piration of terms, were made without constitutional authority, and are null and void. The only effectual remedy for this state of things, is to be found in an amendment of the Constitution. The Legislature has no

> These reflections are submitted for the consideration of the people, without any dispo- rades or perish in the attempt. The river sition to criticise the conduct or competency of any of the judicial officers now holding seats on the bench, but with an earnest de sire to see all causes of dissatisfaction removed and remedied.

JEFFERSON DAVIS-WHY HE HAS NOT BEEN TRIED, AND HOW HE IS TO BE TRIED.

from the New York Times. Washington, Tuesday, April 10.-As here is much speculation concerning Jefferson Davis, and as there have recently been umors of process being commenced to re ease him from confinement without a trial, may be stated that the Secretary of War, a letter dated January 4, says that Jeferson Davis has not been arraigned upon adjetment or formal charge of crime, bu has been indicted for the crime of high reason by the Grand Jury of the District of Columbia, which indictment is now pending in the Supreme Court of said District. He s also charged with the crime of inciting the assassination of Abraham Lincoln, and of the murder of the Union prisoners of war by starvation, and other barbarous and ernel treatment towards them. The Presi ient, deeming it expedient that Jefferson Davis should first be put upon his trial b fore a competent court and jury, for the rime of treason, he was advised by the law officers of the Government that the most roper place for such trial was in the State of Virginia; that State is within the judi-ial circuit assigned to the Chief Justice of he Supreme Court, who has held no court here since the apprehension of Davis, and who declines, for an indefinite period, to

old any court there. The matters above stated are, so far as am informed, the reasons for holding Jefferson Davis in confinement, and why he has not been put upon his trial. The At-torney-General of the U. States expressed himself against the doctrine of "constructive presence," giving the opinion that Jef-ferson Davis and others of the insurgents ought to be tried in some of the States or istricts in which they in person respective committed the crimes with which they pay be charged. None of the Justices of the Supreme Court have held Circuit Courts in these States and districts since actual hostilities ceased; and, he adds, when the Courts are open, and the laws can be peace-States, whose people rebelled against the Government; when thus peace shall have me in fact and in law, the persons now held in military custody as prisoners o war, and who may not have been tried and convicted for offences against the laws of war, should be transferred into the custody of the civil authorities of the proper dis ricts to be tried for such high crimes and isdemennors as may be alleged agains hem. I think that it is the plain duty of he President to cause criminal prosecution

be instituted before the proper tribunals, and, at the proper times, against some of those who were mainly instrumental in in-augurating, and most conspicuous in concting the late hostilities. It will be recollected that the President, it is annual message, said that strong objecons had been urged to holding those court any of those States where the rebellion nas existed; and it was ascertained, by in ury, that the Circuit Court of the United ates would not be held in the District of irginia during the autumn or early winter, nor until Congress should have an op-portunity to consider and act on the whole ject. To the deliberation of Congress added, the restoration of this branch of he civil authority was necessarily referred with the hope that early provision would be ande for the resumption of all its functions o order that persons charged with the com ission of treason should have fair and in partial trials in tye highest civil tribunals f the country. Congress has not yet, how ever, passed any act in accordance with this ndation to remove the objections of

hief Justice Chase, and here the matter rests for the present. The Judiciary Committee of the House as appointed a sub-committee, consisting f Messrs. Boutwell, Rogers and Wilson, t examine the records in possessin of the Bureau of Military Justice and other departents of the Government, with reference to the alleged complicity of Jeff. Davis in the

LOUS ESCAPE OF PARTIES FROM A

The Indianapolis Herold of the 12th cor Sth instant, in which an account of an exploration of the celebrated "Dead Man's lave," situated near Leveanworth, is given It contains several thrilling incidents. The exploring party consisted of Major Throcknorton, of Louisville; Capt. Holcraft, Sheriff Swane, Dr. E. R. Hawn and Lyman F. Knapp, of this place; Mr. Jesse Brandon of Nashville, and the Herald's correspond on the bank, to determine whether an attempt should be made to cross it in its present swollen condition. Mr. Knapp, myself and Sheriff Swayne suggested an abando ment of the expedition, but were overruled by Dr. Hawn, Major Throckmorton, Cap ain Holcraft and Mr. Brandon, who, while person to fill the vacancy, except during the time of the notice of the election-- attempt, declared they would rather perish than abandon the expedition now, and stand

sixty days in case of Supreme Judges, the ridicule which such a movement would and thirty days in case of other entail upon their heads. Judges and Chancellors. A failure to issue The boat was accordingly launched, and writs of election, within a reasonable Captain Holcraft, Dr. Hawn, and myself entime, would be a plain dereliction of executive duty—an appointment of a Judge or Chancellor to hold the office indefinitely, tered, the doctor playfully remarking that some men who were destined to die another death could never be drowned. We found and without issuing writs of election, would the passage much easier than we expected. Captain Holcraft took the oars, while I grasped the tiller and the doctor held aioft | 890,607,62." These remarks apply only to the filling of the flambeau. A vew vigorous strokes, and vacancies occurring by death, resignation or with a sensation of relief, we felt the keel grate upon the pebbles of a sloping bank on the other shore, in still and quiet water. A usty cheer from the doctor made the cavern ring, and informed the rest of the party that the passage had been safely accomplished. brought over the remainder of the party.

Capt. Holcraft then returned, and soon Continuing the exploration, the party circular hole, apparently almost bottomless, under the Constitution, and if he has assum- when he vigorously signified that he had Our own people know it is false, but such

He was drawn up, looking a trifle paler editor, J. W. Forney, D. D., is the only succonferred on the Governor, and his appoint. than usual, and declaring that his curiosity | cessful competitor in the United States, of ments are null and void. On the other had been amply satisfied. Mr. Knapp said for the appointments made by Gov. John-that, after descending a distance of lifteen the Eccatag Post, et id omne genus, who pubson are valid, and will continue in force, or twenty feet, numerous winged things, ap- lish such slanders expressly to render ununtil the 4th Thursday of May, 1870, they being legalized by the schedule to the amendgether with a devilish sort of twitter. One make a correction should we convince them of If I have arrived at erroneous conclusions, of these, cold, clammy, and inexpressibly their error.

or have overheld any provisions of the Connasty, alighted on his face, and sinflicted a Governor Worth's administration is marked stitution or law, bearing upon the subject, severe bite. Mr. Knapp nearly fainted with by exalted patriotism, uncommon ability I would be pleased to be corrected and set | disgust, and declared that if the rope had | and devotion to the interest of the whole

fallen. The party having become quite satisfied tion. President Johnson has no more devofor filling vacancies in the judicial department, except when the vacancies occur from to leave for daylight, when, upon the earnest justice and law no better exponent, and death, resignation, or removal of the incum-bents. solicitation of Dr. Hawn, the party was per-suaded to continue the explorations a little 2 As there was no valid election of beyond, when, says the writer, the most dges on the 4th Thursday in May, 1862, painful portion of the story commences, made are based upon the qualifications of all the judicial offices became vacant at that The party entered a new cavern, which sud- the appointees, and each and every one are denly narrowed. Mr. Knapp, going first,
3. As the Constitution makes no provision for filling such vacancies, all the appointfor filling such vacancies, and each and every one are
for filling such vacancies, and each and every one are
for filling such vacancies, and the control of the filling such vacancies, and the control of the filling such vacancies, and each and every one are
for filling such vacancies, and the filling such vacancies and the filling such vacanci ments made by executive nuthority were ber, Dr. Hawn, who is a very heavy man, ous to the great interest of the State.- Wil attempted to follow, and became inextrica- mington Journal.

4. But inasmuch as the schedule to the bly fixed in the passage. He could neither For three hours the party worked inces santly, but all to no purpose. We sent back son, those appointees will legally hold their to the river and got the iron stake, with offices until the fourth Thursday in May, which the boat had been fastened, to use as

a crowbar. With this the doctor might have been extricated, but here a new calamity manifested itself. One by one the lamps had burned out, until barely enough oil was The thought of being imprisoned in that living tomb was too terrible to be endured, for we knew that, without light, we could that there are grave doubts in the public mind, whether our courts are legally constituted and organized, and whether their judgment and decrees are entitled to full respect and confidence.

The Governor could do much towards a partial remedy, by taking the responsibility of issuing writs of elections. The Legislature has no other power in the premises than to propose the necessary amendment for the ratification of the people. The Governor could do much towards a partial remedy, by taking the responsibility of issuing writs of elections. almost to the point of disability, we returned to the cave, determined to rescue our com was crossed, and we proceeded to the grand chamber where we had taken our lunch, ac-

companied by numerous citizens of Leaven

But search as closely as we would, we ould not find the gallery in which the doctor and Mr. Knapp were entombed. In vain we explored and shouted until worn out and fainting. All to no purpose. Neary three days have passed since we first entered the cave, and during all that time it has been full of people, uselessly hunting for the two unfortunate men. One after another of the various galleries leading from the grand chamber, have been explored and blazed with chalk marks, bu still the missing men cannot be found. We are begining to lose heart, but will perse vere as long as there is the faintest hope The guide of the Mammoth Cave, in Kentucky, has been sent for to assist in the search. I shall remain here a day or two longer, to do what little I can, and will in form you if the men or their bodies are

Mr. Knapp has since been found. He wandered about the cavern and was at last fortunate enough to find an opening in an old sink hole, where was found by a hunter, fifty-six hours after he was left by the party in the cavern. Dr. Hawn had not been discovered at last accounts.

THE NEW CONSTITUTION OF MIS-SOURI.

Sr. Louis, April 12.-In the Circuit Court, Judge Reber presiding, the case of Jno. D. S. Dryden vs. Thomas C. Fletcher Governor of Missouri, the Judge of the Sueme Court and others, came up for trial Mr. Dryden, it will be remembered, was one of the Judges of the defunct Supreme Court whose position was declared vacant by the Constitutional Convention of 1865, and who failing to comply with the ordinance vacating his office, was removed therefrom by force. He now claims damages to the amount of several thousand dollars, on the ground of unwarranted arrest and aggravated as

Considerable time was consumed in empanneling a jury on Monday. There were fifty-three challenges in all. It was difficult to find any one who had not formed some sort of opinion on the merits of the case. Two of the jurors, however, stated that they had never heard of anything in regard to it Yesterday the counsel for the plaintiff of fered in evidence the commission of Mr Dryden as a Judge.

Objections were made as to its admissability, on the ground that fundamental lay of the State vacated the commission on th 1st day of May, 1865, and as it was dated several months previous, it was irrelevant. The point was argued at length by Mr. Morrill for plaintiff, and Mr. Drake for the defense. Judge Rober decided that th ommission of Gov. Gamble to the plainti was not competent evidence, holding tha the ordinance of the Constitutional Conven tion which removed Messrs. Bay and Dryde was valid, and was a proper amendment o the constitution under the act calling the Convention. The Judge also held tha Judge Dryden had no legal title to the office of Judge of the Supreme Court on the day was removed by force : and that he could not recover in an action for his ejectmen from that office. This decision sustains the new constitution throughout, and the legality of the action of the Convention; and that the Judges had no vested rights to their seats, but could be removed at any time by

the act of the people. WHAT THE UNITED STATES MIST HARDWARE,

Mr. Schofield's speech in the House of Representatives at Washington on the loan bill, contains the following interesting state What is the amount of indebtedness to be met, and when must it be met? To this ques tion I invite the careful and earnest attention of the House. I shall give the official statement of the amount of our total indebt ess, and also that portion soon to become The amount of our public debt on the first day of this month was \$2,711,850,000. Less than half of this amount is funded. Within the next three years \$1,600,000,000 of this debt will fall due, and will be presen-ted at the counter of the Treasury Depart-

THRILLING NARRATIVE .... MIRACL. ment for payment. That payment must be promptly made, or our paper goes to protest and our credit is broken. I hold in my hand an official table, showing the amount of our indebtedness that matures each hal tains a letter, written at Leavenworth on the vear for the next two years, which after a word of explination, I will read. There was on the last day of February 866, a portion of our debt in the form of porary loan to the amount of \$119,335 194 50, payable at the option of the lender after ten days notice. It would hardly be fair to reckon that whole amount as payable within the first six months, yet as it may be called for at any time, and is the least valent. The party proceeded to the subterra-nean river, which flows through the cave, when, says the letter, a consultation was had payment of this loan to be demanded with-

the next six months, I call attention to the facts exhibited in the table. Between this day and the 30, of June next | Fishing Tackle, we must pay, in addition to the regular exenditure of the Government, \$138,674,874-During the six months ending Decem ber 31, 1866, we must pay \$47,655,000. During the six months ending June 30, 18 67, we must pay \$8,471,000. During the must pay \$350,000. During the six months ending June 30, 1868, we must pay \$369,415 250. During the six months ending Decem ber 31, 1868, we must pay \$287,564,482. So that between this and the assembling of the next Congress there must be paid over the counter of the Treasury, besides the ordinary expenditures of the Government, \$1,201,

North Carolina Politics.—The Raleigh (N. C.) Standard says that Governor Worth, of that State, appoints none but rebels to office, and that he has gone over fully to the disloyal faction.—New York Freming Post.

It is by such publications as the above that the cause of reconstruction is hindered in the South. President Johnson's policy has no more bitter enemy in Congress than i came to a place where was discovered a deep | has in the editor of the Standard, because forsooth that policy did not lead to his own eleva-

papers as the Washington Chronicle, whose

good and without reference to party or fac-The appointments to which reference is BANKS.

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